

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	4:09CR3031
)	
v.)	
)	
LOWELL BAISDEN,)	MEMORANDUM AND ORDER
)	
Defendant.)	
_____)	

This is a complex criminal tax case. The defendant, Lowell Baisden, has filed a detailed motion in limine and request for a hearing pursuant to Rule 104 of the evidence rules. (Filing no. 200.) The government has responded with an equally detailed response. (Filing no. 213.) Baisden has submitted a thoughtful response. (Filing no. 214.)

In its response, the government makes certain representations that moot much of Baisden's motion or else serve to substantially reduce any legitimate cause for concern. Moreover, many of Baisden's requests lack a firm legal basis.

I will order the government to abide by its representations. I will also order the government to provide citations to the Internal Revenue Code that Mr. Troester will primarily rely upon when expressing his expert opinion. In addition, I will require the government to provide the names of coconspirators who will not appear at trial and who made statements for which the government will seek admission under the provisions of Federal Rule of Evidence 801(d)(2)(E). Otherwise, I will deny the motion without prejudice to the assertion of particularized objection during trial.

With respect to Rule 404(b), I will also consider giving an appropriate limiting instruction if a timely request is made at trial. Defense counsel should be prepared to provide the prosecutor and me with a proposed limiting instruction.

IT IS ORDERED that:

1. Except as provided below, Baisden's motion in limine and request for Rule 104 hearing (filing no. 200) is denied.
2. The government shall abide by the representations made in its response regarding: (a) Motion Requests 1-4 (filing no. 213 at CM/ECF pp. 1-2); (b) Motion Request 6 (*id.* at CM/ECF pp. 3-5); (c) Motion Request 9 (*id.* at CM/ECF pp. 7-8); (d) Motion Requests 10 and 11 (*id.* at CM/ECF p. 8); and (e) Motion Requests 12 and 13 (*id.* at CM/ECF p. 8).
3. No later than 5:00 PM on Friday, September 30, 2011, counsel for the government shall provide counsel for Baisden with the following:
 - A. citations to the Internal Revenue Code that Mr. Troester will primarily rely upon when expressing his expert opinion, and,
 - B. the names of coconspirators who will not appear at trial and who made statements for which the government will seek admission under the provisions of Federal Rule of Evidence 801(d)(2)(E).

September 22, 2011

BY THE COURT:

Richard G. Kopf
United States District Judge